CHUA CHWEE THIAM

v.

ANNIE LIM

HIGH COURT, SINGAPORE
CHAN SEK KEONG J
[DIVORCE PETITION NO. 139 OF 1981]
13 APRIL 1989

FAMILY LAW: *Divorce application by husband to revoke maintenance agreement - Change of financial circumstances.*

The petitioner and the respondent had by a written agreement dated 20 March 1982 agreed on certain financial arrangements between them in their divorce proceedings. Under the terms of the agreement, the wife (respondent) and their child was provided with a capital sum as well as monthly sums, medical expenses, monthly household outgoings and expenses, car and for the daughter, her school/college expenses.

The petitioner applied to revoke the agreement on the ground that he was "financially stretched" and that at the time he signed the agreement his business was doing well but since then he had suffered setbacks and his company was in dire financial straits. The petitioner gave evidence of his and his company's debts and that his company was in receivership. The petitioner also provided evidence on his daughter's extravagance.

Held:

[1] The petitioner has produced more than sufficient evidence to show that there has been a material adverse change in his financial circumstances at the date of his application.

[2] The evidence shows that the respondent is well off.

[3] The daughter, as she has been overwhelmingly extravagant will have her maintenance reduced to $500 per month.

For the petitioner - K.Y. Choy
For the respondent - Lee Han Tiong

JUDGMENT

Chan Sek Keong J:

This is an application made on 4 June 1987 by the petitioner to revoke an agreement dated 20 March 1982 ("the agreement") entered into between the petitioner and the respondent setting out the financial arrangements between them in the divorce proceedings.

Under Clause 1 of the agreement, the petitioner agreed to (and did) pay a capital sum of $150,000 in instalments to the respondent (60%) and their daughter (40%) who was born on 28 December 1965.

Under Clause 2 of the agreement, the petitioner agreed to pay the respondent until she remarries and the daughter until she marries the following:

(a) the monthly sum of $3,500 and $1,500 respectively, tax free;

(b) all medical and dental expenses, including costs of hospitalisation;

(c) all monthly outgoings in respect of the respondent's flat known as No. 19E Grange Heights, Singapore;

(d) all food and other household provisions not exceeding $1000 pm;

(e) all monthly instalments payable in respect of a car ER 8790X and the costs of maintaining it, including the cost of employing a driver "provided that when the car is sold by the husband to purchase another in substitution, the proceeds of the sale shall belong to the husband and that the car to be so purchased in substitution shall be of comparative standard";

(f) all premiums payable in respect of two policies of Life Insurance Nos. 6222207 and 497954;

(g) the school/college expenses of the daughter and if she shows a potentiality for university education to support and maintain her in respect thereof;

(h) the policy of Life Insurance No. 225976 to be assigned to the wife and daughter;

(i) the respondent's legal fees in connection with the divorce proceedings agreed at $5000.

Under Clause 5 of the agreement, the respondent agreed to support, maintain and educate the daughter according to her status in life and also to pay for her university education.

The petitioner's application is based on the ground that he was "financially stretched". He has alleged that at the time he signed the agreement, his business was doing well but since then he had suffered setbacks and that his company Rimaco (Pte) Ltd. was in dire financial straits. The financial position of the petitioner at the date of hearing of this application, on the basis of his affidavits, may be summarised as follows:

(1) $857,690.70 due to Citibank as at 24 May 1987 secured by a mortgage on No. 2 Saraca Hill, Singapore;

(2) $642,023.85 due to Deutsche Bank, $160,000 due to the developer in respect of No. 10-06, Faber Garden, Singapore;

(3) $190,000 due to CPF and $305,00 due to Citibank, secured by mortgages on No. 11 Chestnut Cresent, Singapore;

(4) $49,887.87 due from Rimaco to Jurong Town Corporation for arrears of rent;

(5) $30,425.70 due to Forward Overseas Credit Ltd. being arrears of instalments (payable by Urban Buildmat Pte Ltd., another of his private company);

(6) $3,108.90 to Teck Leong Hardware Pte Ltd. by way of judgment debt (payable by Rimaco Pte Ltd);

(7) $2,903,832 to Deutsche Bank (by Rimaco Pte Ltd);

(8) $118,858 to Forward Oversea Credit (payable by Urban Buildmat Pte Ltd);

(9) CPF contributions to some employees for certain months in 1985 and 1986;

(10) $24,439.30 to the Comptroller of Income Tax being the balance payable for the Y/A 1985 assessment of $69,457.60 and also $29,595 for Y/A 1986.

(11) $6,426.37 due to Diners Club at 9 December 1987;

(12) $4,139.84 due to Carte Blanch at 3 December 1987;

(13) $16,805.75 due to American Express at 9 October 1987.

The petitioner has also produced evidence that (a) the 3 credit cards mentioned above have been cancelled; (b) that he had not been able to pay his tax arrears amounting to $51,629.13 in October 1987 and (c) that receivers and managers were appointed in respect of Rimaco on 16 October 1987.

The petitioner has also produced evidence that his daughter had been extravagant in her use of his credit cards whilst studying in London from 1985 to 1987. This spending, which for the year of 1986 alone amounted to $50,888.85, was additional to the amount of 38,000 pound he had given her for the three years she was in London (1985 - 15,000 pound; 1986 - 15,000 pound and 1987 - 8,000 pound). There is also undisputed evidence that, on top of these sums, the petitioner in fact had paid $1600 monthly maintenance from August 1982 to October 1985 amounting to $63,400, although his obligation was only to pay $1500 per month. Altogether, there is irrefutable evidence that the petitioner had been over generous with his daughter.

As regards the respondent, the petitioner had paid from August 1982 to February 1987 for her personal maintenance and other expenses the total sum of $293,816.49 i.e. $5,246 per month under the terms of the agreement. He has defaulted in his payments from August 1985 up to July 1987 as a result of which the arrears due to the respondent was $89,391.61, in respect of which the respondent has taken out proceedings against him to recover the same.

The respondent's case is that the petitioner has not produced sufficient evidence to show an adverse change in his financial circumstances. She disclosed that the petitioner owned (1) 3 Jaguar cars and 1 BMW car and (2) a large bungalow at No. 11 Chestnut Crescent where his mistress and his son were living. The petitioner's reply to this was that he bought the Chestnut Crescent property to house his mistress and son in discharge of his moral obligations towards them and that the property was financed by a loan from Citibank and his CPF account, in respect of which he has to pay $3960 (less $2260 from CPF) per month. In respect of the cars, the petitioner says that two have been sold and the proceeds paid to Rimaco and that the other two, one of which was bought in 1984, have been remortgaged in 1985 to finance Rimaco and that it was necessary for him to keep two cars to maintain his credibility in business circles. I should also add here that the petitioner is also supporting the second wife and another son (born in 1970) who is now studying in the Ngee Ann Polytechnic.

The respondent and the daughter have made other allegations which implied that the petitioner has hidden assets somewhere, one such allegation being that the petitioner in 1986 had put the daughter up in a hotel in Mayfair, London at 200 pound per night. The petitioner's version is that his hotel expenses were paid for by an Indonesian company with which he had some business dealings in the past and that he only paid 90 pound for the daughter's room. He said he had to do it to maintain business credibility with his business acquaintances.

In my view, the petitioner has produced more than sufficient evidence to show that there has been a material adverse change in his financial circumstances at the date of his petition. The purchase of No. 11 Chestnut Crescent does not detract from this finding as it was purchased in July 1985. His principal private company, Rimaco, was put into receivership in October 1987, his credit cards have been cancelled and he has not been able to pay his income tax.

On the other hand, the respondent is well off. In addition to 60% of the lump sum of $150,000 received by her, she owns a property at Grange Heights and Holland Road. She still drives a Mercedes Benz and she has also retained $80,000 from the sale of a BMW which she had been using earlier.

As for the daughter, the evidence is overwhelming that she has been totally extravagant in her style of living. In the premises, I am of the view that Clause 2 of the agreement should be suspended **with effect from June 1987** except for Clause 2(d) which is to be varied by reducing the maintenance therein to $500 pm. There will be an order in terms. Each party will pay his or her own costs of this application. There shall be liberty to apply.

Also found at [1989] 2 CLJ 535